

#21

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appn. Number 09/872,914
Appn. Filed 06/01/2001
Applicant Ferdinand Schermel
Title Tilttable Modular Recycle Container System
Examiner Stephen J. Costellano
Art Unit 3727

FAX RECEIVED
DEC 12 2002
GROUP 3700

Dec 12/2002

No. Of page including this one: 1

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Applicant has responded to PAPER NO. 17 Office Action mailed 11/05/2002, concerning the improper filing of the RCE with regards to claim 2 and the combining into claim 1 new matter. The issue at this time is that claim 2 is directed to non-elected subject matter. Applicant would respectfully add to the omission or correction submitted Nov 23, 2002, the following considerations to support that claim 2 is part of the elected invention:

With regards to MPEP 806.04(f). "Claims restricted to different species must be mutually exclusive. The general test as to when claims are restricted, respectively, to different species is the fact that when one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. This is frequently expressed by saying that claims to be restricted to different species must recite the mutually exclusive characteristics of such species". In this patent "at least one attachable container" includes "a plurality of attachable containers" and therefore claims 1 and 2 are not mutually exclusive and cannot be restricted to different species.

With regards to MPEP 806.04(h) the species must be patentably distinct from each other. Restriction should not be required if the species claimed are considered clearly unpatentable over each other. The forming of a rigid entity is the issue pertaining to the elected species. Suppose a configuration of a wheeled container having two attachable containers as claimed in claim 1 ("at least one attachable container", but in this instance two attachable containers). Such a configuration would be identical to the configuration described or claimed by claim 2 where in this instant case a plurality of two attachable containers is selected. Both claim 1 and 2 in this instance would be clearly unpatentable over each other.

With regards to MPEP 806.04(e) claim 1 and 2 are have a commonality of operation, function and effect in that they both form the rigid entity and are both secured in the same manner.

For the above reasons as well as those the Nov 23, 2002 response, the applicant requests the allowance of the fig 1 amendment and the claim 2 language in the RCE.

Since the communication is limited to written only (paper No. 14) applicant requests that further communication is faxed as soon as possible as well as mailed.

Applicant pro se

Ferdinand Schermel